From: philippa jeffery
To: Microsoft ATR
Date: 1/28/02 4:56pm
Subject: Microsoft Settlement

Dear Sir/Madam,

Please find attached the Tunney Act Comments for Citizens Against Government Waste.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff Civil Action No. 98-1232 (CKK)

v.

MICROSOFT CORP.,

Defendant

COMMENTS ON THE PROPOSED SETTLEMENT

BY:
Citizens Against Government Waste
Thomas A. Schatz
President
1301 Connecticut Ave., NW - Suite 400
Washington, DC 20036
(202) 467-5300 FAX: (202) 467-4253

On behalf of the one million members and supporters of Citizens Against Government Waste (CAGW), I am providing comments on *U.S. v. Microsoft* pursuant to the Tunney Act. CAGW supports the settlement as being in the public interest and opposes further litigation in this case. Further expenditure of tax dollars and government resources on this case, which has stifled technology, innovation, and investment at a time when the economy is in recession and the nation is at war, would not benefit the American people.

CAGW is a nonprofit, nonpartisan organization founded in 1984 by J. Peter Grace and Jack Anderson following the report of President Reagan's Private Sector Survey on Cost Control, better known as the Grace Commission. Since its founding, CAGW has been researching, publicizing, and working to eliminate wasteful government spending. In particular, CAGW has exposed mismanagement of governmental resources in the technology sector, such as incompatible computer and accounting systems, as well as billions of dollars spent on hardware and software that simply did not work. On the basis of our 18 years of nationally recognized expertise representing the interests of American taxpayers, we are submitting our comments to you today.

On November 6, 2001, Microsoft, the Department of Justice (DOJ) and nine states agreed to a Proposed Final Judgment (PFJ) in the lawsuit against the company. As the overriding element of the Tunney Act is whether an antitrust settlement is in the public interest, CAGW submits that the PFJ clearly meets this standard.

CAGW estimates that to date the Microsoft lawsuit has cost taxpayers more than $35 million. It has also hobbled one of America's premier high-tech engines of growth at a time when we need to jump-start our economy. The PFJ is fair to all sides in the case, including:

- Microsoft, which will continue to be able to provide new software that integrates new products;
- Competitors, who will have more access to the Windows platform to incorporate their products or make them compatible;
- Software manufacturers, who will get back to the business of creating innovative products;
- Consumers, who will have more choices among software products; and,
- Investors, who will have stability in the marketplace.

Perhaps of greatest benefit to the American people, the settling states will avoid additional costs and now be able to focus their time and resources on matters of far greater significance. As noted by District Court Judge Colleen Kollar-Kotelly, who pushed for a settlement after the attacks of September 11, it is vital for the country to move on from this lawsuit. The parties worked extremely hard to reach this agreement, which has the benefit of taking effect immediately rather than months or years from now when all appeals from continuing the litigation would finally be exhausted. Furthermore, Microsoft, DOJ and the nine states have accepted the settlement as better than continued proceedings.

Specifically, Microsoft will not be broken up and will be able to continue to innovate and provide new software and products. Software developers and Internet service providers (ISPs), including competitors, will have unprecedented access to Microsoft's programming language and thus will be able to make Microsoft programs compatible with their own. Competitors also benefit from the provision that frees up computer manufacturers to disable or uninstall any Microsoft application or element of an operating system and install other programs. In addition, Microsoft cannot retaliate against computer manufactures, ISPs, or other software developers for using products developed by Microsoft competitors. Plus, in an unprecedented enforcement clause, a technical committee will work out of Microsoft's headquarters for the next five years, at the company's expense, and monitor Microsoft's behavior and compliance with the settlement.

The settlement is compatible with the findings of the U.S. Court of Appeals for the District of Columbia, which substantially narrowed the scope of legal liability and instructed the U.S. District Court to created remedies that fit the "drastically altered" findings. As Assistant Attorney General for Antitrust Charles James said in testimony before the Senate in December:

> Of the twenty anticompetitive acts the court of appeals reviewed, it reserved with respect to eight of the acts that the district court had sustained as elements of the monopoly maintenance claim. Additionally, the D.C. Circuit reversed the lower court's findings that Microsoft's "course of conduct" separately violated Section 2 of the Sherman Act. It reserved the district court's rulings on the attempted monopolization and tying claims, remanding the tying claim for further proceedings under a much more difficult rule of reason standard. And, or course, it vacated the district court's final judgment that set forth the break-up remedy and interim conduct remedies.

Acceptance of the PFJ would send a clear signal to the nine remaining states and the District of Columbia opposed to the settlement that their remedy is not appropriate given the findings of the court of appeals. The alternative proposed by the remaining plaintiffs appears to be based on the original district court decision, which is no longer relevant. Dragging the proceedings out further, with a new remedy hearing, a new district court decision, another appeal to the D.C. Circuit, an appeal to the Supreme Court, and remand back to the court of appeals and district may be in the interests of Microsoft's competitors, but it is not in the public interest.

Most importantly, this settlement is fair to the computer users and consumers of America, on whose behalf the lawsuit was allegedly filed. Consumers will be able to select a variety of pre-installed software on their computers. It will also be easier to substitute competitors' products after purchase as well. The PFJ even covers issues and software that were not part of the original lawsuit, such as Windows XP, which will have to be modified to comply with the settlement.

Public opinion is squarely in favor of settlement. Voter Consumer Research conducted polls of 1,000 eligible voters in Utah and Kansas in November, 2001, and opposed further action by their state attorneys general following the settlement by a 6 to 1 margin. This is an even greater percentage than previous polls concluding, by a 2 to 1 margin, that the lawsuit brought by DOJ and the 19 states was a waste of tax dollars.

The Microsoft case was supposedly brought on behalf of American consumers, who have paid the price of litigation through their taxes. Investment portfolios have been substantially devalued during this battle, and now more than ever, the country needs the economic stability this settlement can provide. This settlement is in the public interest, and should be accepted without change.

Respectfully Submitted,

Thomas A. Schatz
President, Citizens Against Government Waste